

BOARD OF APPEALS CASE NO. 4999

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BEFORE THE

APPLICANT: Sean Butler

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ZONING HEARING EXAMINER

REQUEST: Variance to permit a shed  
within a recorded easement;  
622 Hornbeam Road, Edgewood

\*

OF HARFORD COUNTY

\*

Hearing Advertised

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Aegis: 12/29/99 & 1/5/00

HEARING DATE: February 16, 2000

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Record: 12/31/99 & 1/7/00

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### ZONING HEARING EXAMINER'S DECISION

The Applicant, Sean Butler, is requesting a variance to Section 267-26(C)(6) of the Harford County Code, to allow a storage shed within a recorded easement in an R3 Urban Residential District/Community Development Project (R3/CDP).

The subject property is located at 622 Hornbeam Road, Edgewood, in the First Election District. The parcel is identified more specifically in the Edgewood Meadows subdivision, Tax Map 66, Grid 3A, Parcel No. 443. The property contains .23 of an acre, more or less, all of which is zoned R3.

Mr. Butler appeared and testified that he purchased the shed from the builder approximately 4 years earlier and did not realize at the time that the shed was located within an existing drainage and utility easement. The Applicant testified that the shed was placed in that location because of the unique environment in the back of the property, namely the presence of power lines across the back of the lot, numerous existing mature trees, and the fall of the land. Mr. Butler stated that during the time the shed has existed in its current location, there have been no ill effects as a result of its placement within the easement. He is aware of no detrimental effects to either adjoining properties or to the neighborhood.

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Mr. Anthony McClune, from the Department of Planning and Zoning, appeared and testified regarding the Department's findings and recommendation. Mr. McClune testified that the property is unique in that the placement of power lines and mature trees on the property severely limits the alternatives for location of the shed. He indicated that the shed's placement in the easement does not appear to affect the drainage on the property and that there are no apparent adverse impacts. This opinion was supported by the Department of Public Works in a memo to Planning and Zoning in which they stated that the shed would not adversely affect the easement, as long as it is not placed on a permanent foundation and does not contribute to drainage problems in the future. The location of the shed would actually meet the required setbacks on the property were it not for the existence of the drainage and utility easement.

Accordingly, the Department of Planning and Zoning recommended approval of the variance, provided the shed is not placed on a permanent foundation and with the understanding that if the shed is found to contribute to a drainage problem in the future, it would be removed from the easement at the owner's expense.

No witnesses appeared in opposition to the request.

### **CONCLUSION:**

Section 267-26(C)(6) provides that: "No accessory use or structure, except fences, shall be located within any recorded easement area." The Applicant is requesting a variance to this Section of the Code to allow a shed to remain located within a 10 foot drainage and utility easement which runs across the back of the property.

The uncontradicted testimony of the Applicant is that the property is unique because there are power lines which run across the rear of the lot, as well as numerous mature trees in the back, which severely limits possible locations for the storage shed. The Applicant testified that he did not believe that the location of the shed would be detrimental to the adjoining properties or to the neighborhood, nor would it impair the purpose of the Code. This position is supported by the Staff Report from Planning and Zoning, as well as in a memo from the Department of Public Works. No witnesses came forward to oppose this request.

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It is the finding of the Hearing Examiner that the subject property is unique for the reasons stated by the Applicant and supported by the Department of Planning and Zoning in the testimony of Mr. McClune. In addition, it would be difficult for the Applicant to find an alternative location for the shed given the unique features of the lot. Further, there is no evidence to demonstrate that approval of the variance would be substantially detrimental to adjacent properties or would materially impair the purpose of the Code.

Therefore, it is the recommendation of the Hearing Examiner that the requested variance to allow the shed within a recorded drainage and utility easement be approved, subject to the following conditions:

1. The Applicant obtain all necessary permits and inspections for the shed.
2. The shed must not be placed on a permanent foundation.
3. If the shed is found to contribute to a drainage problem in the future, it must be moved out of the easement at the owner's expense.

Date

March 9, 2000

Valerie H. Twanmoh

Valerie H. Twanmoh  
Zoning Hearing Examiner